

NOTE FOR THE TECHNICAL PANEL IN
RELATION TO THE PROPOSED CHANGES TO SECTION 8
OF THE MARKET CODE AND CORRESPONDING CHANGES TO
THE ARTICLES OF ASSOCIATION OF
CENTRAL MARKET AGENCY SCOTLAND (CMA)

PROPOSED ALTERATIONS TO THE MARKET CODE
AND THE ARTICLES OF ASSOCIATION ("Articles") OF CMA

1. At the meeting of Directors of CMA on 26 September 2007 it was identified that:-
 - 1.1 certain issues, notably concerning governance are covered in both the "Go Active" draft of the Market Code, and the Memorandum and Articles of CMA;
 - 1.2 in at least one case, the quorum for Board Meeting, there was an inconsistency between the relevant provisions of the Market Code and the Articles of CMA; and
 - 1.3 there were provisions contained in the Market Code which would be more appropriate to include in the Articles in order for example, where practical, to include all of the provisions on a particular matter in the one document.
2. As a result, CMA's solicitors were instructed:-
 - 2.1 to identify the substantive overlap between the Market Code and the Articles of CMA, and those provisions in the Market Code might more properly be contained in the Articles of CMA, and likewise, those provisions (if any) of the Articles of CMA that might more properly be contained in the Market Code, and
 - 2.2 to identify the specific changes required in order to ensure that the provisions which should properly be included in the Articles of CMA were included therein and not in the Market Code, and that those provisions which were best included in the Market Code and not in the Articles of CMA, were included in the Market Code.
- 3.1 As a result CMA's solicitors have produced the two documents which comprise Schedule 1 and Schedule 2 to this note. Schedule 1 is an extract from Section 8.4 of the Market Code and shows those sections of the Market Code which it is proposed should be deleted from the Market Code, and the matters dealt with in those Sections covered in the Articles. At the end of each of the deleted sections there is a numbered reference to an Article, which is a reference to the Article of that number in Schedule 2 to this note which contains the provision dealing with the subject matter deleted from the Market Code.
- 3.2 It is intended that the Articles, and only the Articles, should contain the broad details of matters such as:-
 - 3.2.1 the composition of the Board of Directors, e.g. Chairman, non-executive Directors, Licence Provider Directors, CEO and Scottish Water Director,
 - 3.2.2 the quorum for the Board,
 - 3.2.3 the circumstances in which someone can become a member of CMA,
 - 3.2.4 the circumstances in which a member of CMA does not have a vote,
 - 3.2.5 the circumstances in which a member of CMA can cease to become of member of CMA,
 - 3.2.6 limitations on the ability of the Board to delegate authority to the Chief Executive Officer,
 - 3.2.7 the rules relating to the proceedings of Directors, and

- 3.2.8 similar matters of structural importance.
- 3.3 Schedule 2 contains a copy of the current Articles of CMA amended to show the alterations which are proposed to these Articles in the light of the alterations which are proposed to the Market Code.
- 3.4 If these alterations are agreed, it will be necessary to renumber the Market Code and therefore to renumber the references to the Market Code in the Articles. However, it was felt that it would be easier to understand these proposed alterations by leaving the numbering as it is currently in the Market Code. This renumbering will be effected if the proposed alterations are approved pursuant to the Market Code.